

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY  
PATENT LITIGATION

NO. 04-MDL-01592

This Document Relates To:

No. 03-CV-11329-MLW

**MOTION FOR LEAVE TO FILE SURREPLY IN OPPOSITION TO COLUMBIA  
UNIVERSITY'S MOTION TO DISMISS**

Pursuant to Local Rule 7.1(B)(3), Plaintiffs Biogen Idec MA Inc. and Genzyme Corporation hereby request leave of the Court to file the Surreply Memorandum in Opposition to Columbia University's Motion to Dismiss, filed herewith.

As grounds for this Motion, Plaintiffs state that its Surreply is necessary because defendant Columbia University ("Columbia") has filed a 29-page Reply brief in which it asserts entirely new arguments, modifies yet again Columbia's previously stated positions, and relies on twenty-six new cases not even cited in its opening brief or in any of the six opposition briefs. Plaintiffs believe that consideration of their Surreply will be helpful to the Court in resolving the pending Motion to Dismiss.

In addition, the Surreply cites additional caselaw regarding a court's discretion to dismiss declaratory judgment claims, as this Court invited in its October 4, 2004, Order. *See Minn. Mining & Mfg. Co. v. Norton Co.*, 929 F.2d 670 (Fed. Cir. 1991); *see also Genentech, Inc. v. Eli Lilly and Co.*, 998 F.2d 931, 937 (Fed. Cir. 1993).

Respectfully submitted,

Date: October 4, 2004

/s/ Donald R. Ware

Donald R. Ware (BBO # 516260)

Claire Laporte (BBO # 554979)

Carla Miriam Levy (BBO # 654212)

FOLEY HOAG LLP

155 Seaport Boulevard

Boston, MA 02210-2600

Telephone: (617) 832-1000

Facsimile: (617) 832-7000

Attorneys for BIOGEN IDEC MA INC. and  
GENZYME CORPORATION

#### **Certification of Counsel**

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for Plaintiffs conferred with counsel for Columbia University on this motion but was unable to resolve or narrow the issues.

/s/ Donald R. Ware